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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th April 2008

No.4944-1i/1(J)-25/2006/LE. —In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 20th March 2008 in Industrial Disputes Case No.17/2006 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Management of M/s. Bhawanipatna Central Co-operative Bank Limited, Bhawanipatna, District- Kalahandi and their workman Shri Narendra Pradhani, Ex-Cadre Secretary was referred for adjudication is hereby published as in the scheduled below:

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE NO.17/2006

The 20th March 2008

Present : Shri G.K. Mishra, O.S.J.S. (Junior Branch)

Presiding Officer,
Labour Court, Jeypore
Dist : Koraput

Between: The Management of,
The Secretary,
M/s. Bhawanipatna Central
Co-operative Bank Limited,
At/P.O.- Bhawanipatna,
Dist- Kalahandi.

.. First-Party—Management

Versus

Its Workman,
Shri Narendra Pradhani,
Ex-Cadre Secretary,
At/P.O.- Koksara,
Dist- Kalahandi

.. Second-Party—Workman

Under Sections :10 & 12 of the Industrial Disputes Act, 1947

<i>Appearances</i> : For the Management	.. Self
For the Workman	.. Self
Date of Argument	.. 15-03-2008
Date of Award	.. 20-03-2008

1. The Government of Orissa in the Labour & Employment Department in exercise of the power conferred upon them under sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 11166/LE., dated the 16th December 2006 for adjudication of the following disputes :—

SCHEDULE

“Whether the action of the Management of M/s. Bhawanipatna Central Co-operative Bank Limited, Bhawanipatna in dismissing Shri Narendra Pradhani, Ex-Cadre Secretary vide Order No. 3681, dated the 26th September 2002 is legal and/or justified ? If not, what relief is he entitled to ?”

AWARD

2. The case seems to have been originated out of the reference submitted by the Government for the determination of an issue with regard to validity and legality of the dismissal entertained by the Management in respect of the workman coupled with any other relief to be granted in consequence thereof.

3. The facts giving rise to the workman's case may be described adumbrated in brief that, the process of enquiry having conducted by the enquiry officer without adhering to the principle of natural justice and the order of dismissal having not been awarded or imposed on the workman by the competent authority, but by a in-charge officer, challenges is meted out by the workman on it's propriety as well as it's operation.

4. The Management on the contrary repelling the assertions put forth by the workman contended *inter alia* that, there being on irregularities committed by the enquiring officer in conducting the enquiry as full and adequate opportunity have been provided to the workman and the Collector, Kalahandi having been authorised to assume the office of the Management, lying temporarily vacant, by the Registrar, Co-operative society to act as a competent authority to appoint or dismiss the employees the order of dismissal can not be challenged to be *null and void*. It is further averred that, the workman having completely admitted the mis-appropriation to have been committed in writing before the authority, he can be estopped from, subsequently challenging the order to be illegal and inoperative in law. Taking above stand, the Management claims for dismissal of the case.

5. The workman appears to have meted out challenges on the propriety of the process of enquiry conducted by the enquiring officer. As it is admitted the workman has accepted the allegation of misappropriation of funds and simultaneously agreed to repay the amount on

instalments. The admitted amount is a part and parcel of the audited amount detected during the course of audit in which he was ordered to give recovery of the same. The acceptance of one charge partly does not militate the other charges not yet being admitted by the workman. In respect of all charges, disciplinary proceeding has been initiated through an enquiry officer who is suppose to conduct the procedure honestly, objectively with fair play without showing any bias. There must be reasonable bias in which a reasonable or sensible person who is apprised of all circumstances can cast reasonable suspicion of bias. Mere aspertrions on the basis of congectrues and sumise can not militate the fair and just procedure. The workman has specifically emphasize on the denial of allowing a legal representative to him to defend the case properly. The contention has not been pleaded before the enquiring officer, nor any cross examination on that light was resorted by him to the enquiring officer, who was tendering evidence in the Court. Unless any point is raised before the enquiry officer, the enquiry officer should not voluntarily permit the workman to have his legal representation. Unless there is a rule prescribed in the statue expressly nothing can be said that, the employee has accrued right to have legal representation to defend his case. The right to be representated through a counsel or agent can be restricted, controlled or regulated by a statue, rules, regulations or standing order. The delinquent has no right to be representated through counsel or agent unless the law sepcifically fonfers such a right. Reliance has been placed in a decision rendered by our Hon'ble Supreme Court in Crescent Dyes and Chemicals Limted *vrs.* Ram Naresh Tripathy, 1993 (II) S.C.C. 115. The rules regulating the service condition of the workman does not prescribed such a provision to carry out the contention fotr any legal or otherwise assistance to defend his case. As a matter of fact the Hon'ble Supreme Court has given a new diamention in the principle of natural justice in Nripendra Nath Bagchi *vrs.* Chief Secretary, Government of West Bengal and C.L. Subramaniam *Vrs.* Collector of Custom, Cochin, AIR 1972 S.C. 2178, that, Assistance of a lawyer is regarded as a part of reasonable opportunity, then the denial of such an opportunity is a violation alike of the constitutional protection under Article 311, Clause-II and the principle of natural justice. The Hon'ble Supreme Court further held that, employees, by and large, have no legal training and when a man is charge with the breach of a rule entailing serious consequences, he is not likely to be a position to present his case at best as, it should be. The English Common Law has propounded the rule that, if by a reason of refusal to engage a legal Assistant, natural justice has been violated then the entire proceeding is liable to be vitiatefied. Reliance has been placed in a decision in R. *vrs.* Secretary of State for the Home Department, Ex-P Mughil, 1973 (3) all E.R. 796. This has been vouchsafed by the rule propounded by our Hon'ble Supreme Court in Board of Trustees of the Court of Bombay *vrs.* Dilip Kumar (1983, (1) S.C.C. 124). It has been emphasized that, justice means, justice between both the parties. The interest of justice equally demand that, the guilty should be punished and that, technicalities and irregularities which do not occasioned failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They can not be perverted to achieve the very opposite end. That would be a counter productive exercise. The objective is to ensure a fair hearings of a fair deal, to the person whose rights are going to be affected (A.K.

Ray *vrs.* Union of India, AIR 1982 S.C. 710).

6. The next submission presented by the workman that, the order of dismissal passed by the Manager incharge-*cum*-Collector, Bhawanipatna is not the proper authority to pass such order, which is not legal. In the instant case as it reveals from the record that, the Management of the Bank being dissolved the, Collector was authorised by the Registrar, Co-operative Society to assume the office of the Management. Such an arrangement was interim till the new Management Committee or governing body are nominated to carry out the official business. The Collector, was not appointed as full fledged body substitute the Management. He was only kept in charge of the Management without being authorised to take up administrative power as enjoyed by the Management Committee or governing body as case may be.

7. The order of discharge or dismissal of a workman must be made by a competent authority. It is established law that, the power to terminate the service is a necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power. In other words, the authority to call an employee in to being, necessarily implies the authority to terminate his service. Reliance has been placed in a decision *Hecken Engineering Co. vrs. Their workman*, 1977, L.I.C. S.C. 1843. The officer to whom such power is delegated would be competent to inflict punishment of discharge or dismissal on the delinquent employees provided that, such delegation is not barred by the service rule and is properly and validly made. Reliance has been placed in a decision rendered in *Hindustan Brown Bery Limited vrs. their workman*, 1968, 1-LLJ, S.C. 571. The dismissal of a workman by a person not competent to or authorised or in absence of any proper proof of delegation of power to inflict such punishment can be held to be invalid. In the instant case, the appointing authority as per Central Co-operative Bank Service Rule is the Managing Committee subject to the approval of the Registrar of Co-operative Societies. (as per Rule-6). The appointment committee is not a single body but a combination of different personnel which consists of (1). The President of the Central Co-operative Bank, (2-) Divisional Deputy Registrar of the Co-operative, (3-) one Director of the Bank and (4-) A Chief executive of the Bank. The appointment committee has power to deal with appointment up to the grade-vii. In respect of other employees the Secretary of the Bank is the competent authority. As per rule-35, the appointing authority shall be competent to impose any major or minor penalties. The Managing committee of the co-operative society is only empowered to appoint or remove the employees. No other person is empowered to exercise such power and function. There is no such rule incorporated in the service Rule empowering or delegating any other person to deal with such matter. The Managing committee being not in existence, no delegation can be presumed to have been conferred on the Manager incharge-*cum*-Collector. The Manager incharge can never be considered as an appointing authority. A power of the collective body can not be exercised by a single individual nor single opinion can substitute the collective mind. The appointing authority means, the authority which actually appointed the officer to the service, which has been terminated. Reliance has been placed in a decision rendered in *Dharam vrs. Union of India* 1980, LLJ, S.C. 293. Further our Hon'ble Supreme Court pronounced in *Krishan Kumar vrs. Division Assistant, Electrical Engineer* (1979) 4-S.C.C. 289, that, the subsequent

delegation of power to subordinate authority to make appointment to post in question would not confer power to remove, the person appointed before such delegation. The trend of authority and law laid down by our Hon'ble Supreme Court that, the appointment authority means the authority which actually appointed the officer to the service and the appointing authority would only initiate the disciplinary proceeding and could conduct the enquiry. In the instant case, no such power like appointment and dismissal has been vested by the Act to the Management in charge in absence of the formation of the Managing committee. In absence of the clear provision in the Rule, no inference can be drawn that, the Manager incharge has been impliedly conferred with power as enjoyed by the Managing Committee. In absence of the Managing Committee the General Body being the superior authority can also exercise the power of removal being an appellate authority. No prejudice can be caused by such removal by the higher superior authority, although one forum may be lost by the employee. Reliance has been placed in a decision rendered by the Hon'ble High Court of Himachal Pradesh in *Rohan Lal vrs. State of H.P.*, 1997, LLJ, 2954. Apart from that the Management in-charge while passing the order of dismissal has not given a speaking order by taking into consideration the contention raised by the delinquent and the report furnished by the enquiring officer. The reason must be shown as to under which circumstances it was necessitated to pass an order of dismissal. It seems that, the Management in charge has not applied his judicial mind before passing any order of harsh punishment of dismissal. The formal order showing dismissal of the workman is quite disapproved and unwarranted which will cause serious prejudice to the workman. The order passed by the Management in-charge without any authority and the enquiry conducted by the enquiry officer without following the principles of natural justice are considered to be illegal and entire proceeding resorted to by the Management is totally vitiated. There being defect in enquiry can be considered to be no enquiry at all. Therefore, by exercise of the power under section 11-A of the Industrial Disputes Act, 1947, this Court is constrained to set aside the order of dismissal, on account of the illegality and inherent in the order and process conducted by the Management & Enquiry Officer.

8. Where the proceeding is held to be illegal for the non-compliance of the principles of natural justice the alternative remedy is to remit the case for further trial of the matter afresh when the proceeding stood vitiated by following the due procedure and in accordance with the law. The enquiry officer may be expected to dispose of the application for legal assistance in light of the observation made in the aforesaid analysis before proceeding further in the case. He will first decide the application for legal assistance by a reasoned order, so that, if any adverse order is passed the workman may challenge the same and the proceeding should be taken up as expeditiously as possible without causing any delay by following the principles of natural justice. If the competent authority is not nominated, the enquiry report if prepared by the enquiry officer should not be submitted to any other officer except the Managing committee. Accordingly, the petitioner be treated to be under suspension during the period till the matter is settled or disposed of and paid subsistence allowance as per rule. Since this case is very old direction is given to the enquiry officer to complete the enquiry within a period of six months from the date of receipt of the Award. After completion of an enquiry necessary order will be passed by competent authority

and till then the workman will remain under suspension.

The reference is answered accordingly.

ORDER

9. The award passed on contest. The order of dismissal is set aside. The Management is to take steps as per the aforesaid observation to conclude the enquiry afresh and pass necessary order till the order is passed, the workman be treated under suspension with payment of suspension allowance as per rule.

Dictated and Corrected by me

G.K. Mishra

dt. 20-03-2008

Presiding Officer,

Labour Court,

Jeypore, Koraput

G.K. Mishra

dt. 20-03-2008

Presiding Officer,

Labour Court.

Jeypore, Koraput

By order of the Governor

G.N. JENA

Deputy Secretary to Government